

AMENDED IN SENATE MARCH 19, 2003
AMENDED IN SENATE FEBRUARY 13, 2003

SENATE BILL

No. 41

Introduced by Senator Bowen

January 6, 2003

An act to amend Section 10515 of, *and to add Article 2.5 (commencing with Section 10510.4) to Chapter 2.1 of Part 2 of Division 2 of*, the Public Contract Code, relating to public contracts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 41, as amended, Bowen. Public contracts: ~~conflict of interest~~ services.

Existing law requires that state or local government selection for the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms be on the basis of demonstrated competence and professional qualifications, rather than competitive bidding, and imposes requirements for the implementation of this method of selection.

This bill would subject the University of California's selection for the professional services of any of those firms to the same requirements.

Existing law prohibits persons, firms, or their subsidiaries who are awarded state contracts for consulting services from submitting a bid or being awarded a contract on or after January 1, 2003, for any action related to the end product of the consulting services contract.

This bill would change that date to July 1, 2003. This bill would also specify that those provisions do not apply to consulting services

~~contracts, as provided~~ *contracts that comply with the requirements for the selection of professional services firms, as provided.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Article 2.5 (commencing with Section 10510.4)*
2 *is added to Chapter 2.1 of Part 2 of Division 2 of the Public*
3 *Contract Code, to read:*

4
5 Article 2.5. *Contracts with Private Architects, Engineering,*
6 *Environmental, Land Surveying, and Construction Project*
7 *Management Firms*

8
9 10510.4. *For purposes of this article, the following*
10 *definitions apply:*

11 (a) “Firm” means any individual, firm, partnership,
12 corporation, association, or other legal entity permitted by law to
13 practice the profession of architecture, landscape architecture,
14 engineering, environmental services, land surveying, or
15 construction project management.

16 (b) “Architectural, landscape architectural, engineering,
17 environmental, and land surveying services” includes those
18 professional services of an architectural, landscape architectural,
19 engineering, environmental, or land surveying nature as well as
20 incidental services that members of these professions and their
21 employees may logically or justifiably perform.

22 (c) “Construction project management” means those services
23 provided by a licensed architect, registered engineer, or licensed
24 general contractor that meet the requirements of Section 10510.9
25 for management and supervision of work performed on university
26 construction projects.

27 (d) “Environmental services” means those services performed
28 in connection with project development and permit processing in
29 order to comply with federal and state environmental laws.
30 “Environmental services” also includes the processing and



1 *awarding of claims pursuant to Chapter 6.75 (commencing with*
2 *Section 25299.10) of Division 20 of the Health and Safety Code.*

3 *10510.5. (a) Selection by the University of California for*
4 *professional services of private architectural, landscape*
5 *architectural, engineering, environmental, land surveying, or*
6 *construction project management firms shall be on the basis of*
7 *demonstrated competence and on the professional qualifications*
8 *necessary for the satisfactory performance of the services*
9 *required. In order to implement this method of selection, the*
10 *university shall adopt procedures that assure that these services*
11 *are engaged on the basis of demonstrated competence and*
12 *qualifications for the types of services to be performed and at fair*
13 *and reasonable prices to the university. Furthermore, these*
14 *procedures shall assure maximum participation of small business*
15 *firms, as defined by the Director of General Services pursuant to*
16 *Section 14837 of the Government Code.*

17 *(b) These procedures shall specifically prohibit practices that*
18 *might result in unlawful activity including, but not limited to,*
19 *rebates, kickbacks, or other unlawful consideration, and shall*
20 *specifically prohibit university employees from participating in the*
21 *selection process when those employees have a relationship with*
22 *a person or business entity seeking a contract under this section.*

23 *10510.6. (a) The University of California shall follow this*
24 *section in negotiating fees and executing a contract for*
25 *professional consulting services of a private architectural,*
26 *engineering, land surveying, environmental, or construction*
27 *project management firm.*

28 *(b) After providing notification to the successful firm of its*
29 *selection, the university shall provide written instructions for the*
30 *negotiations that are to follow. These instructions shall provide the*
31 *private consulting firm with necessary information that shall allow*
32 *the negotiations to proceed in an orderly fashion. Negotiations*
33 *shall begin within 14 days after the successful firm has been*
34 *notified of its selection or upon receipt of the cost proposal. The*
35 *contractor should be notified if additional time is necessary to*
36 *begin negotiations.*

37 *(c) Upon the completion of negotiations, the university and the*
38 *private firm shall proceed to execute a contract that the university*
39 *shall complete within 45 days. The contractor should be notified*
40 *if additional time is necessary to complete the contract. The*

1 university and private firm shall work together to ensure the
2 successful delivery of the requested services in a timely fashion.

3 (d) In the event an impasse is reached in negotiations, the
4 university may terminate negotiations and enter into negotiations
5 with the next qualified firm, in the same manner as prescribed in
6 Section 10510.8 with respect to management services contracts.

7 10510.7. (a) In the procurement of architectural, landscape
8 architectural, engineering, environmental, land surveying, and
9 construction project management services, the university shall
10 encourage firms engaged in the lawful practice of their profession
11 to submit annually a statement of qualifications and performance
12 data.

13 (b) (1) Statewide announcement of all projects requiring
14 architectural, landscape architectural, engineering,
15 environmental, land surveying, or construction project
16 management services shall be made by the university through
17 publications of the respective professional societies. The
18 university, for each proposed project, shall evaluate current
19 statements of qualifications and performance data on file with the
20 university, together with those that may be submitted by other firms
21 regarding the proposed project, and shall conduct discussions with
22 no less than three firms regarding anticipated concepts and the
23 relative utility of alternative methods of approach for furnishing
24 the required services and then shall select therefrom, in order of
25 preference, based upon criteria established and published by the
26 university, no less than three of the firms deemed to be the most
27 highly qualified to provide the services required.

28 (2) These procedures shall specifically prohibit practices that
29 might result in unlawful activity including, but not limited to,
30 rebates, kickbacks, or other unlawful consideration, and shall
31 specifically prohibit university employees from participating in the
32 selection process when those employees have a relationship with
33 a person or business entity seeking a contract under this section.

34 10510.8. (a) The university shall negotiate a contract with
35 the best qualified firm for architectural, landscape architectural,
36 engineering, environmental, land surveying, and construction
37 project management services at compensation that the university
38 determines is fair and reasonable to the University of California.

39 (b) Should the university be unable to negotiate a satisfactory
40 contract with the firm considered to be the most qualified, at a

price the university determines to be fair and reasonable to the University of California, negotiations with that firm shall be formally terminated. The university shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the university shall terminate negotiations. The university shall then undertake negotiations with the third most qualified firm.

(c) Should the university be unable to negotiate a satisfactory contract with any of the selected firms, the university shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this article until an agreement is reached.

10510.9. Any individual or firm proposing to provide construction project management services pursuant to this article shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

SEC. 2. Section 10515 of the Public Contract Code is amended to read:

10515. (a) No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract on or after July 1, 2003, for the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

(b) Subdivision (a) does not apply to either of the following:

(1) Any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract that amounts to no more than 10 percent of the total monetary value of the consulting services contract.

(2) Consulting services contracts that comply with ~~Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code. Article 2.5 (commencing with Section 10510.4).~~

~~SEC. 2.—~~

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety

1 within the meaning of Article IV of the Constitution and shall go
2 into immediate effect. The facts constituting the necessity are:

3 In order to conform the threshold date specified in Section
4 10515 of the Public Contract Code to the operative date of that
5 section, and thereby avoid any potential problems resulting from
6 the unintended retroactive application of the statute, it is necessary
7 that this act take effect immediately as an urgency statute.

